

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	97 CR 697	DATE	9/22/2000
CASE TITLE	USA vs. Andrew Traeger		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry]   Enter Memorandum. This Court hastens to advise both Meczyk and government counsel on the recent <u>Kitchen</u> decision.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	SN courtroom deputy's initials	ED-7 FILED FOR DOCKETING 00 SEP 22 PM 4: 28	number of notices	Document Number 105
			SEP 25 2000 date docketed	
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			9/22/2000 date mailed notice	
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			mailing deputy initials	

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**DOCKETED**

SEP 25 2000

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 97 CR 697
	)	
ANDREW TRAEGER,	)	
	)	
Defendant.	)	

MEMORANDUM

During the course of the most recent status hearing in this action, the most recently appointed counsel for defendant Andrew Traeger ("Traeger"), Ralph Meczyk ("Meczyk"), had occasion to refer to his responsibilities as such counsel in relation to the adequacy-of-representation considerations that might conceivably give rise to a later 28 U.S.C. §2255 motion.<sup>1</sup> In the course of discussing the matter, this Court had mentioned the possibility that such considerations might perhaps be legally inapplicable because the services Meczyk was now rendering to Traeger were post-conviction.

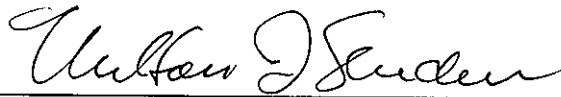
As sheer chance would have it, however, at almost exactly that moment our Court of Appeals was issuing its opinion in Kitchen v. United States, No. 97-3808, 2000 WL 1298010, at \*2-\*3 (7<sup>th</sup> Cir. Sept. 14), which decided precisely that question in the identical context: a post-conviction and pre-appeal motion for

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<sup>1</sup> Strickland v. Washington, 466 U.S. 668 (1984) is of course the seminal authority in that respect.

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new trial under Fed. R. Crim. P. ("Rule") 33. Kitchen distinguished cases from other Circuits that had indicated a defendant had no constitutional right to counsel on a Rule 33 motion, holding instead that in the parallel situation that was at issue in Kitchen (and that is also involved in Traeger's case) a defendant has the same constitutional right to counsel as during the criminal trial itself. That then provides a directly applicable precedent for the present case, and this Court hastens to advise both Meczyk and government counsel on that score.



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Milton I. Shadur  
Senior United States District Judge

Date: September 21, 2000